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The National Banks not subject to the Bankrupt Law.

We print elsewhere an able opinion pronounced by Judge BLODGETT in the United States District Court at Chicago, on the 30th ult., determining that the national banks in case of insolvency are not liable to be proceeded against under the bankrupt law. The novelty and great importance of this case induces us to publish it in full, notwithstanding the fact that in order to do so, we are obliged to continue a part of another very important case to our next number.

At the conclusion of the reading of Judge BLODGETT'S opinion, the attorneys for the petitioner gave notice that a petition for review before the circuit court would be filed.

Kansas Municipal Bonds.

Within the past two years, the supreme court of Kansas has affirmed the constitutional validity of the legislation of the state, authorizing the issue of bonds in aid of railway enterprises. Leavenworth county v. Miller, 7 Kan. 479; State ex rel. St. Joseph and Denver City Railway company, 7 Kan. 542; Morris v. Morris county, 7 Kan. 576. Before that decision was made, as well as since, a large amount of such bonds has been issued. The bond *diathesis* seems to have been very strongly marked in Kansas, and bonds for legitimate as well as illegitimate purposes issued in extravagant and improvident amounts. Acts authorizing municipal or local public aid to *private* enterprises, have been passed and bonds issued thereunder, but the issue of this class of securities has been effectually checked by the decision of the circuit court of the United States, in the case of the Commercial Bank v. City of Iola, 2 Dillon, C. C. R. 353, which case is now before the Supreme Court of the United States on error.

We commence in this number the publication of the recent opinion of the supreme court of Kansas in the important case of Lewis v. Bourbon county. The amount of the securities which this decision affects, is shown by the report of the auditor of state, just printed. He gives in tabular form the amount of county, city, and township indebtedness, from which it appears that $6,941,816 are county bonds, $2,360,199 are city, and $1,447,430 are township. The bonds issued in aid of railroads are $7,550,256; for bridges, $1,057,550; for other purposes, $2,141,639; total, $10,749,165. The actual debt is $13,379,775; namely, state, $701,745; municipal, $10,749,445; school, $1,928,585.

Extension of Time for Completion of the St. Paul & Pacific Railroad.

In the Senate of the United States on the 11th inst., Senator RAMSEY introduced the following bill for an extension of time to the St. Paul and Pacific Railroad company for the completion of the roads, which was read twice and referred to the committee on public lands:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the time for the completion of the railroad from St. Anthony to Brainerd, in the state of Minnesota, as now limited by law, and of the railroad from St. Cloud to St. Vincent, in said state, as now located, with the approval of the Secretary of the Interior, be extended for the period of eighteen months from the time limited by the acts of congress relating to the same, respectively, and if completed within said eighteen months, the said railroads shall be entitled to all the benefits of the several provisions of the acts of congress relating thereto, in the same manner as if said roads had been fully completed within the time therein limited.

This is the road for which the circuit court of the United States for Minnesota appointed a receiver to borrow money to build the extension lines, in order to save the land grant from lapsing (2 Dillon C. C. R. 248); but whose operations were interfered with by the financial panic which soon afterwards occurred. The Dutch bondholders, who have put some $15,000,000 of money into the enterprise, and the value of whose security depends so largely upon the land grant, upon the faith of which they advanced their money, would seem to have an exceptionally strong equity for the relief which the bill proposes to give them.

Bankruptcy Act—Fraudulent Preference—Lien of Execution Levied Before Bankruptcy Proceedings Commenced.

On the 22d day of December, the Supreme Court of the United States pronounced a very important decision under the bankruptcy act, in the case of Wilson, assignee in bankruptcy of Vanderhoff Bros., against the City Bank of St. Paul, upon a certificate of division from the circuit court of Minnesota.

In this case, Vanderhoff Bros., owing the bank, suffered their *entire stock* of goods to be seized on execution on a judgment by default obtained against them by the bank, and thus, as alleged, they fraudulently preferred the bank over other creditors, against the provisions of the bankrupt act, and the assignee sought to have the proceeds of the sale on execution applied in the claims of all the creditors. The case in the court below is reported in 1 Dillon C. C. R., p. 476, under the name of Vanderhoff's assignee v. City Bank, where the leading facts will be found stated.

On these facts the following questions arose, on which the court divided, and they were certified to this court for answer:

1. Whether or not an intention on the the part of the firm to suffer their property to be taken on execution, with intent to give a preference to the bank, or with intent to defeat or delay the operation of the bankrupt act, can be inferred from the facts stated.

2. Whether, under the facts, the bank in their proceedings had reasonable cause to believe that a fraud on the bankrupt act was intended by the firm.

3. Whether, under the circumstances, the bank obtained by the levy and execution a valid lien on the goods as against the assignee in bankruptcy.

We have not yet received an authenticated copy of the opinion of the Supreme Court, but they are reported to have said, that in their opinion, something more than the passive non-resistance of the insolvent debtor to regular judicial proceedings, in which a judgment and execution are had when the debt is due, and he is without just defence to the action, is necessary to show a preferment of a creditor, or a purpose to defeat or delay the operations of the bankrupt act; that

the fact that the debtor under such circumstances does not file a petition in bankruptcy, is not sufficient evidence of such preference, or desire to defeat the operations of the act; that though the judgment creditor in such a case may know the insolvent condition of the debtor, his levy and seizure are not void under the circumstances, nor any violation of the bankrupt law; that a lien thus obtained by him, will not be displaced by subseqent proceedings in bankruptcy against a debtor, though within four months of the filing of the bill. These propositions require the questions certified to be answered—the first two in the negative, and the third in the affirmative. This decision is supposed to overrule, or largely qualify, what was said by Justice CLIFFORD, in delivering the opinion of the Court, in the case of Buchanan v. Smith, reported in 16 Wall. 277. Evidently the opinion in this case is of great moment, in fixing the scope of the bankrupt act, and particularly of the thirty-fifth section; and on the assumption that the views of the Supreme Court are correctly indicated above, its judgment will somewhat surprise those who have derived their notions upon the subject of illegal preferences under the act, from the opinions of the district, and even the circuit courts, upon the subject. We shall place before our readers at an early day, the text of this important and, doubtless, well-considered opinion.

Railway Aid Bonds.

WILLIAM J. LEWIS v COMMISSIONERS OF BOURBON COUNTY.

Supreme Court of Kansas, Nov. 15, 1873.

SAMUEL A. KINGMAN, Chief Justice.
DAVID J. BREWER, D. M. VALENTINE. } Associate Justices.

1. **Contracts—Province of Courts.**—It is not the province of courts to make contracts between parties, but only to enforce contracts already made.

2. **Principal and Agent—Estoppel.**—A principal is not bound by the acts of his agent, unless authorized, or unless his own acts and representations estop him from denying the authority.

3. **County Bonds—Justice to Tax-payers.**—In controversies between a county and the holder of its supposed securities, good faith to the tax-payers requires that no charge be left on his property unless legally placed there, and that no contract be enforced unless legally made.

4. **Issuing Bonds and Subscribing Stock—Form of Proceeding.**—The form of proceeding in the submission of the question, of subscribing stock and issuing bonds to a railroad corporation, are designed as a protection to the tax-payers; and a due observance of those forms is essential to valid action.

5. **To Whom issued—Corporation Must be in Existence.**—Under the act of 1866, an existing corporation must be named as the recipient of the proposed subscription and bonds; and a submission of the question of issuing bonds to "any corporation now organized, or that hereafter be organized," that shall construct a certain line of roads, is unauthorized and void.

6. **Power to Subscribe construed Strictly.**—The grant of power to a municipality, to subscribe to the stock of a private corporation, is the delegation of an extraordinary power, and should not be extended beyond the fair import of the words used.

7. **Necessity of Legislative Sanction.**—Without legislative sanction, the assent of a majority of the voters would not authorize a municipality to make such a subcription.

8. **Nature of the Authority Given by the Statute.**—The authority given by the statute is not to give so much or pledge so much for the construction of a railroad, but to take so much stock in a railroad corporation.

9. **Election on Question of Subscription—Canvassing Vote.**—The statute does not make the county commissioners the canvassing officers, nor designate the time and place of making the canvass of votes cast at an election held on the question of subscribing of stock in a railroad corporation.

10. **Majority of Votes—Condition Precedent.**—A majority of the votes cast at such election is a condition precedent to the vesting of any authority in the commissioners to make the subscription.

11. **Result of Election—Fraudulent Canvass—Returns from uncounted Townships are Notice to the World**—Where the commissioners omit to prescribe by order the time and place of making the canvass, and where a majority of the votes cast are against the proposition, a canvass made by the commissioners which shows a majority in favor of the proposition, when the canvass appears upon its face to be partial and not to include the returns from some townships, does not conclude the county, as to the vesting of authority in the commissioners, and is notice sufficient to put every one on enquiry as to the actual state of the vote; and when the returns from the uncounted townships are filed in the county clerk's office, on the very day after the canvass, and are placed with the other returns, and so remain, every one is charged with notice of the actual result of the election.

12. **Statute Construed—Curative Act of 1868.**—The curative act of 1868, applied only to cases where "a majority of the persons voting" voted in favor of the subscription. It aimed to sustain, not to defeat, the will of the majority.

13. **Statute Construed—Question of Subscribing Stock to two or more Corporations.**—The statute does not authorize the submission to a single vote, of the question of subscribing stock and issuing bonds to two or more corporations. The question o making the subscription to each corporation, must be submitted separately.

14. **No Recitals in Bonds—Holders Chargeable with Notice of Court Records.**—Where bonds purporting to have been issued by a county, contain no recitals of an election, or of proceedings and orders of the county board, but are naked promises to pay, every purchaser and holder of these securities, is chargeable with notice of whatever appears upon the face of the county records.

15. **The Same—Want of Authority shown by County Records a Defence.**—If, in such case, it appears upon the face of the county records, that the commissioners had no authority to issue the bonds, the county may avail itself of that want of authority, as a defence to an action even of a *bona fide* holder.

16. **Holder chargeable with Notice of Record referred to in Law.**—Where a bond or other instrument purports to have been issued by virtue of a certain order, named and referred to, but not copied or described, every one claiming any rights by virtue of that bond or instrument, is chargeable with notice of the contents of the order.

17. **Holder Chargeable with Notice of what Appears on Public Records.**—Purchasers of negotiable paper issued by an agent, the nature and extent of whose authority must by law appear upon the face of the public records, are chargeable with notice of whatever appears upon those records.

All the justices concurring in the above syllabus.

BREWER, J., delivered the opinion of the court.

This is an application to this court for a writ of mandamus, commanding the levy of a tax to pay the coupons on certain bonds issued by the county of Bourbon to the Tebo and Neosho Railroad Company, and by it sold and transferred to the plaintiff. Two questions exist and are discussed by counsel in their briefs with great ability. *First*, Had the commissioners the authority to issue these bonds? and, *Second*, If not, can this want of authority be set up as a defence to an action by the present plaintiff, who claims as a *bona fide* holder for value?

The material facts are these: On the 8th of March, 1867, without any prior petition therefor, the county commissioners of Bourbon county, ordered "that an election be called on the first Tuesday in May, 1867, for the purpose of submitting the question of voting $150,000 to any railroad running east to connect with the Tebo and Neosho railroad, as per order published." The order published proposed to subscribe $150,000 "to the capital stock of any railroad company now organized, or that shall hereafter be organized, that shall construct a railroad commencing at a point on the Tebo and Neosho railroad, running westward *via* Fort Scott, and that the bonds of said county be issued to said company for the same." On the 10th of May thereafter, being the Friday next succeeding the first Tuesday of May, the commissioners' record shows a canvass of the votes. In this canvass appears in one column the names of the townships, and in columns opposite the number of votes for and against the proposition. The columns are added and show 468 votes for the bonds, and 442 against. Then follows this recital: "Majority for bonds, 26 votes. And it was declared that there was a majority of twenty-six votes cast for railroad bonds. And, it is also further certified, that there was no evidence of an election having been held in the township of Franklin and Walnut." This record is not signed by the commissioners, nor attested by the clerk. The poll-book from Franklin township was filed in the county clerk's office on that day, placed with the poll books from the other townships, and has been there kept ever since. It appears, however, from the testimony, that it did not reach the county clerk's office, and was not filed, until after the commissioners had left the office. This poll book showed 4 votes for, and 134 against the proposition, which, with the votes already counted, would make a majority of 104 against the bonds.

On the 23d of July, 1869, more than two years after this election, the record of the commissioners shows that application was made by the officers of the Tebo and Neosho railroad for a subscription to the capital stock of that company in pursuance of this vote, and that the board resolved that it was not advisable then to make the subscription. At the same time, an order was made, submitting to the voters the question of issuing bonds to a company building a road west from Fort Scott. At the close of that order appears the following recital: "And, whereas, some question has arisen as to the propriety and legality of subscribing the stock and issuing the bonds provided for by the election of the 7th of May, A. D., 1867, to the Tebo and Neosho railroad; and, whereas, it is considered that the foregoing order, in addition to the one affirmed on the 7th of May, 1867, aforesaid, will be generally satisfactory to the people of this county: It is therefore ordered and provided, that the decision of this question by the qualified voters of said county, at the said election, in favor of such subscription, shall be also a decision in favor of the former subscription of the 7th of May, 1867, being made at once to the Tebo and Neosho Railroad company, and the Board of Commissioners will accordingly, in such case, make the subscription authorized by said election of May 7th, 1867, and will issue the bonds therein provided for, as soon as the terms and conditions of said subscription are complied with by said railroad company." A canvass of the votes cast at this election, showed 1428 votes for, and 703 against the proposition. This result was declared by the canvassers, and thereafter the bonds were issued, and for value transferred to the plaintiff.

Upon these facts, four questions are raised as to the authority of the commissioners to issue these bonds:

1. Was the presentation of a petition signed by one-fourth of the qualified voters a condition precedent to any action by the commissioners, and without which no power to issue bonds passed to the county authorities?

2. Did the failure to name the railroad corporation avoid the whole proceedings? Or, as counsel have stated the question in their brief, could a subscription be made to the stock of the Tebo and Neosho Railroad Company under and by virtue of the order of March 8th, 1867, and the vote of May 7th, 1867, that corporation not being named as the recipient of the proposed subscription? This question is discussed more fully by counsel in a case submitted subsequent to this, that of the Missouri River, Fort Scott and Gulf railroad company v. Miami County, and we may have occasion to refer to the briefs and arguments in that case.

3. A majority of votes having been cast, as a matter of fact, against the proposition, were the county Board authorized to subscribe the stock and issue the bonds.

4. If no authority existed therefor, did the proceedings of July 23d, 1869, and the subsequent vote, confer authority?

Before noticing these specific questions, it may be proper to consider an argument which is often used in cases of this kind and pressed with great force and ability by counsel in this,—the argument of good faith. The county gave the bonds to obtain the road; it has obtained the road; therefore, in good faith, it should pay the bonds. The company has fully complied with its contract; the county ought to do the same. The public conscience is weakened, and public morals suffer whenever a municipality avoids its contract through any technicality. Credit is shaken and confidence undermined whenever promises to pay are repudiated. Considerations of this kind, however, appropriate for individual consciences and as a guide to individual action, can never overthrow settled rules of law. A party may have given to another his note; every consideration of honor and good faith may demand that he pay it; but if suit be not brought till five years from its maturity have passed, and the statute of limitations be pleaded, the courts must sustain the o when so connected with other considerations as to present a case of equitable estoppel, that the courts can interfere. Courts will never make a contract, because they think the parties ought to have made one. Again, in cases like this, the bondholder is not the only party who can rightly press the demands of good faith. The tax-payer is entitled to equal consideration. He is guaranteed protection in property as well as person. He may not be heard in the courts to restrain the issue of these securities. If the authorities, through stupidity or collusion, are placing a burden upon his estate, he is powerless to prevent it. Craft v. Jackson County Commissioners, 5 Kansas, 518. A new election may enable him to change these officials, but the wrong is already done. He has a right, then, in the name of good faith, to demand of the courts that no charge shall be left on his property unless legally placed there, and that no contract shall stand, unless legally made. More than that he has no right to ask; less than that he ought not to receive. True, he is not a nominal party to this action, but he is the real party in interest. The simple enquiry, then, in cases of this kind, should be, whether the forms of law have been so far complied with, that a valid contract has been made. It they have, then the contract should be sustained, and the bondholder have his judgment. If they have not, then the county should have judgment. No considerations of supposed good faith will justify a court in making and then enforcing a contract between the parties. As protection to the tax-payers, the law has prescribed certain forms of proceeding that nothing be done without their consent. These forms are all the protection the tax-payer has; and it is only by insisting on an observance of these forms as a condition of valid action, that any security is offered him. If they are to be frittered away by judicial sanction, it were better to dispense with them altogether, and give the authority to the commissioners to act without the delay and expense of first consulting the voters.

We shall not stop to discuss the first question raised; simply saying, that if this were the only objection, we should deem it cured by the act of 1868 (Gen. Stat., p. 892).

No corporation was named in the proceedings of March, 1867, as the recipient of the proposed subscription and bonds. The proposition in effect was, whether authority should be granted to the commissioners to take stock *in any corporation now organized, or that might hereafter be organized*, that should construct a railroad from the Tebo and Neosho railroad westward *via* Fort Scott. That a vote authorizing a subscription to one corporation will not sustain a a subscription to another, even though the latter build the very line of road contemplated by the former, and sought to be secured by the vote, is settled. St. Joe & D. C. R. R. Co. v. Commissioners of Nemaha County, 11 Kas. See also Marsh v. Fulton county, 10 Wall. 676. The question now is, whether, under the statute, the people must select the corporation, or may they delegate authority to the commissioners to make the selection. The statute reads, "That the board of county commissioners of any county to, into, through, from, or near which, whether in this or any other state, any railroad is or may be located, may subscribe to the capital stock of any such railroad corporation, in the name and for the benefit of such county, not exceeding in amount ————, but no such bonds shall be issued until the question shall be first submitted to a vote of the qualified electors of the county," etc. This statute grants to the commissioners an extraordinary power. The constitutionality of such legislation has been questioned, though sustained. Its wisdom has been denied, even where its constitutionality has been sustained. To prevent abuse of this power, a specific, express authority from the voters is required. The manner of proceeding to obtain this authority is prescribed. Without legislative sanction, the assent of a majority of the voters would not bind the county, nor make valid, bonds issued in pursuance thereof. Pendleton county v. Amy, 13 Wall. 304. The assent of a majority binds

defence. Mere good faith will never give a cause of action; it is the county no further than the legislature has provided it shall. And a statutory power so liable to abuse, should not, by construction, be enlarged beyond the plain warrant of the language used by the legislature. What is the county board empowered to do? It may make a subscription to the capital stock of a railroad corporation. A subscription is a contract. A contract requires two parties. There can be no subscription of stock without a corporation to receive the subscription. The county was not authorized to pledge its funds to aid in building a railroad. It could not bind itself to give so much for a road. The railroad project might be aided, it is true, but only by virtue of the fact that the corporation had obtained a responsible subscriber for a large amount of its stock. But before the board could make a subscription to the capital stock of any railroad corporation, *the question* must first be submitted to a vote of the qualified electors. What question? Manifestly the question of making the subscription—entering into the contract with the railroad corporation. The whole question, not a fragment of it—the question of authority to make *the* contract, not *a* contract. The whole authority delegated to the board by the first clause of the section, rests upon the expressed assent of the voters. It is an entire thing—the consummation of a contract—and to it as an entirety the people must assent. It may be said that the language used contemplates the submission of only the question of issuing bonds. "No such bonds shall be issued until the question shall be first submitted." "If a majority of the votes cast at such election shall be in favor of issuing such bonds, the board of commissioners," etc. But the issue of bonds is the last act of the board—the consummation of the contract. Bonds are to issue only in payment of stock already subscribed. If the language limits the question to that of issuing bonds, it limits it to that which implies a subscription already made—a contract already entered into—and therefore, an existing and named corporation, the recipient of the subscription and the party to the contract.

In the arguments made in the case of the Missouri River Fort Scott and Gulf Railroad company v. Miami county, to which we referred, some stress is placed upon the use of the verbs "is or may be," in the first sentence of the section, which authorize the commissioners of any county, "to, into, through, from, or near, which any railroad is or may be located, to subscribe to the capital stock of any such railroad corporation," and it is claimed that "is" is used in a continuing sense, and refers, not to the time of the passage of the law, but to the time of making the subscription, and that, therefore, the addition of the words, "may be" contemplates a location subsequent to the subscription. In support of that claim, the case of James v. City of Milwaukee, decided by the Supreme Court of the United States, and reported in Chicago Legal News, of Feb. 22d, 1873, is cited. It is unnecessary to determine whether the citation supports the construction, or whether the construction is correct. For the corporation must exist before it can locate its road, and all that such construction would warrant is, that the subscription might be made, and, therefore, might be authorized, before the corporation had finally located its road, and not that it might be authorized before any corporation existed. The citation might be pertinent, and the construction demand examination, if the language had been "any railroad corporation which is, or may be organized."

It may be asked, what difference does it make? The thing to be secured is the railroad, and if that be accomplished, it is enough. We reply, the legislature has not authorized counties to give their bonds, simply to secure railroads; it has authorized them to take stock in railroad corporations, and pay for it in bonds. It makes the same difference to a county that it does to an individual, as to the corporation in which stock is proposed to be taken. The county, like an individual, might be willing to take $150,000 of stock in a corporation, whose capital stock was only $250,000, thereby securing the control of the corporation, while it might not be willing to subscribe a like amount or any amount to one whose capital stock was $10,000,000, in whose control it would thus have little voice. Again it might be willing to subscribe to and risk its funds with a corporation whose managers were men of known good character and financial responsibility, and not be willing to do the same with one whose controlling men were wholly irresponsible. The fairness and good sense of the legislation is altogether on the side of the construction, which the natural meaning of the language so plainly demands. It seems, therefore, that some corporation must be named as the recipient of the subscription and bonds, or the proceedings will be without warrant of law and void.

A majority of the votes cast at the election of 1867, were against subscribing stock and issuing bonds. This is an undisputed fact. The statute reads, "If a majority of the votes cast at such election shall be in favor of issuing such bonds, the board of commissioners of the county shall issue the same." Laws 1866, page 73, § 1. That an election is a prerequisite to the issue of bonds, is unquestioned. Equally clear is it, that at such election a majority of the votes must be in favor of the issue. Power to issue is not vested in the commissioners by virtue of their office, but given only by express authority of the voters. Issuing bonds without a vote, is no more *ultra vires*, than issuing them against the vote of a majority. Express authority by an affirmative vote, is a condition precedent to the existence of the power. These general propositions will not be disputed, and if the commissioners had at their meeting, on May 10th, 1867, canvassed the entire vote of the county, and declared the result in accordance therewith, (namely, a majority of 104 against the proposition), no one would be foolhardy enough to claim that the commissioners had any power to issue these bonds, given by that election. It is claimed, however, that the commissioners were the proper canvassing officers; that at the legal time and place they made the canvass and declared the result, and that the county is bound thereby. It must be conceded that this claim finds ample support in the language of some of the opinions of the Supreme Court of the United States. That tribunal has uniformly held that the determination of the county board was the adjudication of a competent tribunal, with full jurisdiction, and cut off all enquiry as to the facts upon which the determination, at least after the bonds had passed into the hands of a *bona fide* holder, was based. In the case of the commissioners of Knox county v. Aspinwall, 21 Howard, 539, Mr. Justice NELSON thus stated the proposition in his usual clear and forcible language: "Full power is conferred upon the board, to subscribe for the stock and issue the bonds, when a majority of the voters of the county have determined in favor of the subscription, after due notice of the time and place of election. The case assumes that the requisite notices were not given of the election, and hence that the vote has not been in conformity with the law. This would seem to be decisive, against the authority on the part of the board to issue the bonds, were it not for a question that underlies it; and that is, who is to determine whether or not the election has been properly held, and a majority of the votes of the county cast, in favor of the subscription? Is it to be determined by the court in this collateral way, in every suit upon the bond or coupon attached, or by the board of commissioners as a duty imposed upon it, before making the subscription? The court is of the opinion that the question belonged to this board. The act makes it the duty of the sheriff, to give the notices of the election for the day mentioned, and then declares if a majority of the votes given, shall be in favor of the subscription; the county board shall subscribe the stock. The right of the board to act in an execution of the authority, is placed upon the fact that a majority of the votes had been cast in favor of the subscription; and to have acted without first ascertaining it, would have been a clear violation of duty; and the ascertainment of the fact, was necessarily left to the enquiry and judgment of the board itself,

as no other tribunal was provided for the purpose. This board was one, from its organization and general duties, fit and competent to be the depository of the trust thus confided to it. The persons composing it were elected by the county, and it was already invested with the highest functions concerning its general police and fiscal interests. We do not say that the decision of the board would be conclusive in a direct proceeding to enquire into the facts previously to the execution of the power, and before the rights and interests of third parties had attached; but, after the authority had been executed, the stock subscribed, the bonds issued and in the hands of innocent holders, it would be too late, even in a direct proceeding, to call it in question. Much less can it be called in question to the prejudice of a *bona fide* holder of the bonds in this collateral way." We have made this lengthy quotation, because it contains as clear and complete a statement of the views therein expressed, as can anywhere be found; and also, because it is from the leading case in that court. The views therein expressed have been uniformly adhered to by that tribunal: Bissell v. City of Jeffersonville, 24 How. 287; Moran v. Miami county, 2 Black, 722; Gelpcke, v. City of Dubuque, 1 Wall. 175; Mercer county v. Hacket, 1 Wall. 83; Van Hostrup v. Madison city, 1 Wall. 291; Supervisors v. Schenck, 5 Wall. 772; Pendleton county, v. Amy, 13 Wall. 297; City of Lexington v. Butler, 14 Wall. 283. It will be observed that this language does not affirm that the determination of the county commissioners gives authority to issue bonds, but only that that determination estops the county from denying the authority. All that is asserted and all that can be found in any of the opinions is, that that determination is evidence of authority otherwise given — evidence that is conclusive in an action by a *bona fide* holder. It is like other canvass-evidence — nothing but evidence of facts already done, and power already given. It is by universal consent, open to enquiry and attack, unless made conclusive by statute, until, at least, rights have been vested on the faith thereof. It is no more potent to confer authority, than a canvass of votes cast for an office, is to give a right to the office. It should not be so weighty, even as evidence; for in the one case, it is necessary that offices should be filled, and that evidence of who are entitled to fill them, should be easily accessible; while in the other, it is not necessary that county bonds should ever be issued to railroad corporations, and the people's right to control the extent of their obligations should not be frittered away, on a mere matter of evidence. The substantial question is, did a majority of the voters grant the authority? the formal question, what does the canvass show? Reverse the status, for a moment, and suppose the canvass showed a majority of 26 votes against, while an actual majority of 104 votes was in favor of the proposition. Would not the authority to issue, pass to the commissioners, and could there be any question, but that bonds thus issued, even in the hands of the obligee himself, could be enforced. "If a majority of the votes cast at such election," is the language of the statute. Can the commissioners by a canvass destroy the power of the majority, and set at naught the will of the legislature? Can they in defiance of the statute, create an authority in themselves? It was well said by the supreme court of Ohio in State ex rel. Treadwell v. The Commissioners, etc., 11 Ohio State, 183: "The decision of the Supreme Court of the United States must rest on the assumption that it was competent for the commissioners of Knox county by some act of their own, to make their authority complete — an assumption we are not at liberty to make in this case." In that case, the county commissioners of any county, through or in which a railroad might be located by any corporation, were by statute authorized to subscribe stock and issue bonds. Under this statute, bonds were issued and passed into the hands of a *bona fide* holder. In a mandamus proceeding thereon, the answer alleged that the railroad had never been located through or in the county, and this answer was held good, and in holding it good, the court used the language above quoted. Starin v. the Town of Genoa, 23, N. Y. 439; The People v. Mead, 24 N. Y., 114; The People v. Mead, 36 N. Y., 224.

[CONCLUDED IN OUR NEXT.]

The National Banks Cannot be Thrown into Bankruptcy.

IN RE MANUFACTURERS' NATIONAL BANK.

District Court of the United States, for the Northern District of Illinois, Chicago, December 30, 1873.

Hon. HENRY W. BLODGETT, District Judge.

1. **National Banks—Bankruptcy.**—A national bank cannot be proceeded against under the bankrupt law; if insolvent, it can only be wound up in the mode pointed out by the national currency act and its amendments.

2. **Statutory Interpretation—Repeals by Implication.**—A statute, although so general in its terms, that its letter would comprehend all classes of persons and things to which it can relate, will nevertheless be construed by the courts as not applying to a particular class which has been specially provided for and regulated by another statute, relating solely to such class, if there is no language in the general statute repealing the former statute, or in any manner referring to it. Thus, the bankrupt act does not repeal those provisions of the currency act and its amendments, which relate to the winding up of insolvent national banks.

3. **"Act of Insolvency."**—What is an "act of insolvency," within the 52d section of the currency act.

Opinion by BLODGETT, J.

On the 15th day of November last, Messrs. R. J. Smith & Co., filed in this court their petition, setting forth that they are creditors of the Manufacturers' National Bank, of this city, for money deposited with said bank in due course of business, and alleging that the said bank had suspended payment on its commercial paper for over fourteen days, and had, when insolvent, made preferential payments; for which acts they prayed that the bank be adjudged bankrupt.

Being aware that grave doubts had been expressed by many lawyers and business men, as to the application of the bankrupt law to national banks, I directed notice of the application for a rule to show cause, to be served on the officers of the bank, and have heard arguments for and against the application. While the discussion upon the question has been unusually able and exhaustive on both sides, it has not, I must confess, left my mind entirely free from doubt as to the rule to be adopted.

The law now in force for the organization and government of national banks, was enacted on the 3d of June, 1864, and has been amended by the act of Feb. 4, [10?] 1868, the act of Feb. 19, 1869, the act of July 12, 1870, and the act of March 3, 1873. embodied in the original act, are very full and ample provisions for winding up and settling the affairs of these banking associations, mainly through the federal courts. The fundamental purpose of the act and its amendments, was to provide a national currency, and ensure its prompt redemption, and, incidentally, to provide banking or fiscal agencies through which the ordinary financial business of the country could be safely transacted.

The leading features of the system were:

1. The security of the circulating notes of those banks, by the pledge of government bonds in the hands of the treasurer of the United States, and in case of the failure of the bank to redeem its notes, then redemption of those notes by the government, for which it is to be reimbursed by the proceeds of the bonds deposited and a first lien on all the assets of the bank.

2. The responsibility of the stockholders of the bank to the extent of the par value of the stock held by them respectively, in addition to the amount invested in their shares.

3. The whole system to be under the surveillance of the comptroller of the currency, with full powers to examine into the affairs of each bank, and in cases of non-compliance with the provisions of the law, to appoint a receiver to administer and wind up their affairs.

On the 2d day of March, 1867, congress passed an act to establish a uniform system of bankruptcy throughout the United States;

and by the thirty-seventh section of said act it is declared, "that the provisions of this act shall apply to all moneyed, business and commercial corporations and joint-stock companies," and by the third clause of the same section it is declared, that "all payments, conveyances and assignments, declared fraudulent and void by this act, when made by a debtor, shall in like manner, and to the like extent, and with like remedies, be fraudulent and void, when made by a corporation and company."

The forty-eighth section declares that the word "person," when used in this act, shall be held to include and mean corporations; and by the ninth clause of the thirty-ninth section, it is made an act of bankruptcy for any bank to suspend payment of its commercial paper for fourteen days.

The bankrupt law is the latest expression of the legislative will, and its general terms and provisions must be held to repeal all previous statutes necessarily incompatible with it. The question then is, does the bankrupt law repeal and supersede the provisions in the currency act for winding up the affairs of insolvent national banks? or can its provisions be applied to those corporations, and leave intact the provisions of the currency act on the same subject? There is no doubt of the soundness of the general rule of interpretation cited by the counsel for the respondent, that a statute, although so general in its terms that its letter would comprehend all classes of persons and things to which it can relate, will nevertheless be construed by the courts as not applying to a particular class, which has been specially provided for and regulated by another statute, relating solely to such class, if there is no language in the general statute repealing the former statute, or in any manner referring to it. Hume v. Gossett, 43 Ill. 297; The People *ex rel.* Becker v. Miner, 46 Ill. 384; Hawkins v. Gathercole, 6 De Gex M. & G. 1; Williams v. Pritchard, 2 Term R., 2. "A thing which is in the letter of a statute is not within the statute, unless it be within the intention of the makers." Bacon's Abridgment, title Statute. "When the intention of the legislature is not apparent to the purpose, the general words of another and later statute shall not repeal the particular provisions of a previous one." Dwarris on Statutes, 117, quoted from Coke. The rule is thus stated in Sedgwick on Statutory and Constitutional Law: "In regard to the mode in which laws may be repealed by subsequent legislation, it is laid down as a rule, that a general statute, without negative words, will not repeal the particular provisions of a former one, unless the two acts are irreconcilably inconsistent. * * * The reason and philosophy of the rule is, that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in general terms, or treating the subject in a general manner, and not expressly contradicting the original act, shall not be considered as intended to affect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction, in order that its words shall have any meaning at all." Sedg. Stat. and Const. Law, 123.

The currency act provides for the appointment of a receiver to wind up the affairs of a national bank, in the following cases:

1. For not keeping good a surplus—12th section.
2. For not keeping stock at a minimum—15th section.
3. For not keeping good its reserve—31st section.
4. For not selecting a place for the redemption of its notes—32d section.
5. For holding its own stock over six months—35th section.
6. For non-payment of its circulating notes—50th section.
7. For improperly certifying a check—section 1, act March 3, 1869.
8. For failure to pay up capital stock, and for allowing same to become and remain unpaid by losses—section 1, act March 3, 1873.

Upon the happening of either of these contingencies, the comptroller may appoint a receiver to take possession of all the books, records, and assets of the corporation, who shall proceed to convert the assets into money under the direction of a court of competent jurisdiction. And the money so realized shall be paid over to the treasury of the United States, subject to the order of the comptroller, who, after deducting, in full, whatever amount shall be due to the United States, shall distribute the balance exactly among the creditors of the bank. The claims of creditors to be proven before the comptroller, or adjudicated in a court of competent jurisdiction. "The application of its assets in the manner prescribed by this act, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be utterly null and void. And by the 48th section, it is made unlawful for any such bank, after suffering a protest of its circulating notes, and after notice from the comptroller, to, in any manner, prosecute the business of banking, except to receive and safely keep its money and deliver its special deposits. And by the 53d section, any violation of the provisions of the currency act, done knowingly, by either a bank, or its officers, or agents, works a forfeiture of all its rights and franchises, to be adjudged by a federal court at the suit of the comptroller. The 8th section provides that said corporations, *i. e.* national banks, "*may sue and be sued, complain and defend, in any court of law and equity, as fully as natural persons.*

And by the 57th section it is declared, that "suits, actions and proceedings against any association under this act, may be had in any circuit, district, or territorial court of the United States, held within the district in which such association be established, or in any state, county, or municipal court in the county or city, in which such association is located, having jurisdiction in similar cases." And by the amendment to this section made by the act of March 3, 1873, it is further provided that "no attachment, injunction, or execution shall issue against such association or its property before final judgment."

I am not aware that any adjudication has yet been made, determining what is an "act of insolvency" within the intent and meaning of the 52d section; but it seems to me to be an act which shows the bank to be insolvent; such as non-payment of its circulating notes, bills of exchange, or certificates of deposit; failure to make good the impairment of capital, or to keep good its surplus or reserve; in fact, any act which shows that the bank is unable to meet its liabilities as they mature, or to perform those duties which the law imposes for the purpose of sustaining its credit.

It will thus be seen that while the currency act does not specify in detail, and provide for all the specific acts of bankruptcy enumerated in the bankrupt law, it yet does furnish, through the functions of an important public officer—the comptroller of the currency—a very complete and detailed scheme or plan for administering the affairs of an insolvent national bank. It is true, there is no provision for an individual creditor's putting this machinery in motion. But the presumption is that congress deemed it wiser to leave this duty to an impartial public officer, rather than entrust it to the hasty, inconsiderate, and perhaps, selfish action of one or more creditors. It was probably thought that the necessity of maintaining the public confidence in the system, was such as would compel the comptroller to act in all cases when a bank had become derelict or discredited, and that this consideration, together with the clear obligations of duty, thrown upon the officer, would be sufficient to ensure his action in all cases when he acquired the right to do so. At all events, the law, as it was enacted, contained ample and specific provisions for creating and managing these corporations, and for administering their affairs, when they became unable or refused to perform their public functions.

The system has been in operation nearly ten years; over 2,000 banks have been organized under it. Of these, 21 have been wound up through the agency of the comptroller and a receiver.

The greater part of them since the enactment of the bankrupt law. All the legislation of congress has looked toward the perfecting and perpetuation of the system; and ought we now to say that congress, by the enactment of the general bankrupt law, intended to place these corporations under the provisions of that law, and to repeal the elaborate plan which it had specially furnished for winding up their affairs, when they became insolvent or incapable of transacting banking business?

That it did not intend to repeal them, is conclusively evidenced by the fact that in two of the important amendatory acts, those of March 3, 1869, and March 3, 1873, especial reference is made to those winding up provisions of the original act, and they are treated as being in full force. So, too, in several cases which have been before the supreme court since the enactment of the bankrupt law, reference has been made to these winding up powers as still in force.

It being clear, then, that congress did not intend to repeal the winding up clauses of the currency act, the question arises, Did it intend that the two remedies, that is, the one given by the currency act, and the one given by the bankrupt act, should exist as co-ordinate or concurring remedies, and the affairs of an insolvent national bank be administered by that tribunal which first acquired control?

This construction might be admitted, if the two were entirely compatible with each other, or if each was equally as complete as the other. That is, if each could reach and administer upon all the assets of the debtor bank, so as to leave nothing to be done by the other.

But we find upon examination, that the important duty of paying the holders of circulating notes, and distributing the proceeds of the bonds deposited to secure them, or the surplus of those bonds, and of enforcing the liability of stock, is left with the comptroller, and can only be enforced by or through him. This latter point was fully discussed and decided by the supreme court, in Kennedy v. Gibson, 8 Wall. 498; when it was expressly held that the comptroller alone could enforce the personal liability clause. The court says: "The receiver is the instrument of the comptroller. He is appointed by the comptroller, and the power of appointment carries with it the power of removal. It is for the comptroller to decide, when it is necessary to institute proceedings against stockholders to enforce their personal liability, and whether the whole or a part, and, if a part, how much shall be collected. The questions are referred to his judgment and discretion, and his determination is conclusive. The stockholders cannot controvert it. It is not to be questioned in the litigation that may ensue. He may make it at such times as he shall deem proper, and upon such data as shall be satisfactory to him. This action on his part is indispensable, when the personal liability of the stockholders is sought to be enforced, and must precede the institution of a suit by a receiver. * * * The claims of creditors may be proved before the comptroller, or established by suit against the association. Creditors must seek their remedy through the comptroller, in the manner prescribed by statute."

Much stress was laid by the attorneys for petitioners, upon the inadequacy of the security for creditors under the currency act, mainly because creditors could not, of their own motion, initiate winding-up proceedings; but how much more inadequate would the bankrupt law be to the same end, if it cannot reach or distribute assets, and perhaps must pay what it gets over to a government officer for distribution. I do not say that an assignee would be obliged to pay over to the treasurer, but that there is grave ground for a claim that he should do so, and that collision might grow out of such claim.

The relief which could be afforded to the creditors of a national bank, then, being so incomplete, I cannot think it was the intention of congress, to clothe bankrupt courts with jurisdiction over this class of corporations. I have already cited the evidence which shows, to my mind, that congress did not intend to repeal the winding-up provisions of the currency act, by the passage of the bankrupt law; and a comparison of the provisions of the two acts, show with equal clearness to my mind, that it did not intend to inject the provisions of the bankrupt act into the currency act, so that creditors could apply the remedies of the bankrupt act, and the comptroller the remedies of the currency act. Because such a construction would inevitably produce collision and conflicts of jurisdiction, and the remedies given by the bankrupt act would be so far unavailing in regard to important assets, as to make it evident that there was no intention to apply such a remedy. Suppose this court were to adjudge the respondent bankrupt to-day, and send its messenger and assignee to take possession of the assets. The officers of the court, could in no event, enforce the personal liability clause, or obtain possession of the government bonds deposited to secure the circulation, or any surplus of those bonds, after fully returning the circulation. Those assets are beyond the reach of this court or its officers, and can only be approached by the way of the comptroller and his receiver. Then why should this court take cognizance of a case it cannot administer.

Why not, rather, say congress has acted upon the subject matter of insolvent national banks and made specific provisions for administering their affairs, and inasmuch as the general bankrupt law has not expressly repealed these specific provisions, nor necessarily contradicted them, the courts will presume it is the intention of congress to except this class of corporations from the operation of the later statute. Such conclusion seems to me consistent with authority; and is, in fact, the only conclusion that will not lead to inextricable complication and conflict of authority.

But it is urged that the currency act makes these corporations liable to all suits and actions which might be brought against national banks, and that they can therefore be proceeded against in bankruptcy. A sufficient answer to this might be found in the fact, that when the currency act was passed, there was no bankrupt law in force, no bankruptcy known to the law; and therefore, the general language must be held subject to this limitation. But I take it, there is no doubt that the legislative power which creates an artificial person or corporation, can also prescribe what remedies shall be had against it, and that such remedies would be held to be exclusive, and that the provisions of the general bankrupt law would not be held to apply to corporations at all, but for the exemptions of the act. Should they then be held to apply to a class of corporations which have, as it seems, a bankrupt law of their own, original with their own constitution and part of their organic law, by the same authority which enacted the bankrupt law? I think not. Nor does it seem to me that there is any necessary hardship in denying the remedies of the bankrupt law to the creditors of this corporation. There is no evidence that either this petitioning creditor or any other creditor has applied to the comptroller to take possession and administer the assets. Additional force is also given to this consideration, from the fact that in the very latest amendment to the currency act, it is expressly provided that no attachment, injunction, or execution shall issue against a bank until judgment is obtained.

It is well known that, in many of the states, proceedings by attachment may be taken by a creditor in the first instance, and, as a matter of course, and in nearly or quite all the states, attachments can issue upon affidavits showing the existence of certain facts, while injunctions are almost universally issued before judgment or decree in equity cases, when a case is made for one. And yet these corporations are, probably for reasons of public policy, simply exempted from liability to all this class of summary proceedings. Here we have a restriction upon the powers of the bankrupt court, almost, if not wholly, incompatible with the jurisdiction. For of what use would it be to proceed in bank-

ruptcy against a debtor, in a large number of cases, unless he could be enjoined, or his property seized by a process of attachment. Before adjudication or judgment could be obtained, the property of the debtor might be wasted or spirited away, so that the adjudication would be barren of results.

I do not say that the prohibition to enjoin or attach property, necessarily implies want of jurisdiction, but only that it goes far to show that it was never the intention of congress to clothe a bankrupt court with jurisdiction as against these corporations.

I am therefore of the opinion that the rule to show cause should be denied, and the petition dismissed for want of jurisdiction.

PETITION DISMISSED.

Supreme Court of the United States.

[We give below the proceedings had in the Supreme Court of the United States, on December 24th, in several important cases, which we take from the New York *Herald*. The court adjourned until January 5th. We expect to be able to give a summary of its proceedings from the 5th to the 10th of January, in our next issue.]

No. 477. Knowles v. Logansport Gaslight Company—Error to the circuit court for Minnesota.—This is an action by the company to recover on a judgment obtained in Indiana. The defence was want of jurisdiction of the person of Knowles in the Indiana case, and the return of the sheriff certifying service of summons, but not showing where it was served, having been admitted as evidence of service against defendant's objections, he brings the ruling here, and raises the following questions: Was the certificate of service properly received as evidence of jurisdiction, and, if so, can it be contradicted on the trial of the action? The further question is raised: If service is made in an action for $3,000, does that give jurisdiction to render judgment for more than that sum? Submitted under the twentieth rule. H. R. Bigelow, for plaintiff in error; F. R. E. Cornell, for defendant.

No. 169. Buckley v. United States—Appeal from the court of claims.—This is another suit for damages for an alleged violation of a contract made with the government for transportation of military stores. The court below found that the government having simply failed to produce the amount of stores for transportation which were contracted for, were not guilty of a violation of the entire scope of the contract, and therefore refused the claimant damages for the profits of the contract lost in consequence of such failure, but allowed him the amount of the expense he had incurred in preparing for the transportation. It was, however, held that he had not sufficiently proven the amount of such expense, and the bill was, therefore, dismissed. From this decision the claimant appeals, insisting that he should have damages for his loss of profits on the contract. The government submits that the decision below was correct. Durant and Homer, for the claimant; C. H. Hill, for the government.

No. 542. McCarty v. Mann et al.—Appeal from the circuit court for Minnesota.—This was an action to quiet title to certain vacant and unoccupied lands in St. Paul, brought by the appellant. The appellees claim, under a conveyance from the patentee, made prior to his patent; and as the appellant disputes the validity of the entry of the patentee, the question arises whether an act of congress reinstating an entry made by the patentee, which had been cancelled by the commissioner of the general land office, so that the title in said lands may inure to the benefit of his grantees, so far as he may have conveyed the same, is such a recognition and ratification of the original entry as will sustain the title of his grantees, made in pursuance of such entry, and which is in the appellees. The appellant maintains that the patentee had no title until after his entry under the special act, and that if this be so, he (appellant) has the better title, derived from the grantees, who took from him immediately thereafter, and that the act did not renew an old title in the patentee, but created a new one. Submitted under the twentieth rule. W. P. Clough, for appellant; H. I. Horn, for appellees.

No. 134. Sohn v. Waterson et al.—Error to the circuit court for the district of Kansas.—This was an action on a judgment recovered in Ohio against the defendants, in 1854. The defence was the statute of limitations of the territory of Kansas (the defendant Waterson being, when the suit was brought, and the act was passed, a resident there), passed in 1859, providing that all actions founded on contracts, notes, bonds, judgments, etc., upon which liability accrued beyond the limits of the territory, should be commenced within two years next after the cause of action accrued. The plaintiff replied that the statute did not apply to his case, because it was passed after his cause of action accrued. The court held, that, as Waterson was a resident of Kansas, when the territorial act went into operation, the limitation began to run from that period, and that, as the action was not commenced within two years after, it could not be sustained. This judgment is sustained here, the court holding that the act was prospective in its operation, and affected existing causes of action only from the time of its passage. Mr. Justice Strong delivered the opinion.

No. 576. Sawyer v. Hoag—Appeal from the circuit court for the northern district of Illinois.—In this case it is held that a debtor of an insolvent cannot purchase claims against his creditor, having full knowledge of the insolvency, and have them set off at their full value against his indebtedness to the insolvent, and the decree below enforcing the same view is affirmed. Sawyer subscribed to the capital stock of the Lumberman's Insurance company, upon an understanding that 85 per cent. would be loaned back to him upon a secured note for the amount. The insurance company becoming insolvent after the great fire in Chicago, Sawyer bought up adjusted claims against the company and sought to have them set off against his indebtedness on the note. The decision treats him as an ordinary debtor of the company, and holds that the set off cannot be allowed. Mr. Justice Miller delivered the opinion. This decision also disposes of cases 579, Jaegar v. Voeke, and 580, Meyer v. Voeke, and the decrees in those cases are affirmed.

No. 165. Solomons v. the United States—Appeal from the court of claims.—Solomons was under a contract with the government to furnish a certain quantity of corn within a certain time, and delivered about three-fourths of it within the time fixed. Subsequently, a quartermaster agreed to accept a further quantity under the contract if delivered within another limited time. The amount was delivered and a voucher given. A part of it was used and a part damaged while lying in the fort. The department, subsequently, refused to pay for the portion not used, on the ground that the contract had expired and could not be extended by verbal agreement. The voucher was accordingly reduced, and payment tendered and declined. The court below sustained the department, and its judgment is here reversed, and the cause remanded with directions to enter a judgment for the amount of the voucher, the court finding that the time was extended verbally, and that such agreement was valid. Mr. Justice Miller delivered the opinion.

No. 480. Town of Ohio v. Marcy—Error to circuit court for the northern district of Illinois.—This was an action on municipal bonds issued by the town, and the defence was that they were not issued by the road for which the subscription was made, but to a consolidated road subsequently chartered. The judgment on the facts found was for the holder of the bonds, and the case was brought here for review; but the court say that the question of law raised is not presented in the record, and the judgment is accordingly affirmed. Mr. Justice Miller delivered the opinion.

Notes of Recent Decisions.

Creditor's Bill; Burden of Proof to show Insolvency.—In an action by a creditor for the purpose of subjecting property in the hands of a donee to the payment of his claim, it being made to appear that the debt was contracted by the donor prior to the making of the gift, the burden of showing the solvency of the debtor at the time of making the gift, rests upon the defendant. Oliver v. Moore, 23 Ohio State, 473.

Legacy; Interest.—Where a bequest of a certain sum of money is made, and time of payment is fixed, the same does not bear interest until the time of payment, except where the law infers an intention to pay interest from the relation of the testator to the legatee. Page's Appeal, 71 Penn. State, (21 P. F. Smith) 402.

———; ———. This inference does not arise from the relation of god-mother and god-daughter. Ibid.

———; ———. But where a trustee or executor is put in charge of a special fund for a legatee to manage for his benefit, his right to the product of the fund may be inferred from the fact of its being so set apart for him. Ibid.

Confusion of Materials; Cheese Factory; Interest subject to Execution.—Baxter and numerous other farmers delivered milk to a cheese factory; each was credited with the amount of his milk, and all was manufactured together; the company sold all the cheese; each farmer was charged with the expense, and received his share of the proceeds in proportion to the milk furnished; Baxter's interest in the cheese, etc., was sold under an execution against him. *Held*, that the sale by the factory converted his interest into a money demand, and this interest was, therefore, not the subject of a levy. The arrangement at the factory did not constitute the farmers partners nor tenants in common in the cheese; nor was there an agency or bailment as to the particular milk delivered. It was a sale of milk to be paid for in a certain time and manner. Butterfield v. Lathrop, 71 Penn. State, (21 P. F. Smith) 225.

Levy upon Real Estate; Inquisition; Deputy Sheriff.—The holding of an inquisition upon real estate levied under a *fieri facias*, is a judicial act, involving an exercise of discretion. The sheriff cannot, therefore, perform it through his deputy. Haberstroh v. Toley, Com. Pleas of Luzerne county, Penn. Reported, Pittsburgh Legal Journal, Dec. 10, 1873.

Trespass for Mesne Profits; Abatement.—Under the Pennsylvania statute of Feb. 24, 1834, § 28, trespass for mesne profits does not abate by the death of the defendant in ejectment, but survives against his personal representatives. Arundel v. Springer, 71 Penn. State, (21 P. F. Smith) 398.

———; *Joint and several Liabilities.*—Where trespass for mesne profits is brought against two, and one pays a certain sum in settlement, and a *nol. pros.* is entered as to him, this does not discharge the other defendant. Ibid.

State Insolvent Laws; Bankruptcy; Discharge of Sureties.—A debtor arrested under the Pennsylvania act of July 14, 1842, gave bond pending his application to be discharged as an insolvent. He appeared, and the hearing was continued from time to time, and whilst the proceeding was pending, he was adjudged a bankrupt in the federal court. *Held*, that the condition of his bond was discharged and the sureties released. The adjudications in bankruptcy suspended the operation of the state insolvent laws. Barber v. Rogers, 71 Penn. State, (21 P. F. Smith) 362.

Landlord and Tenant; *Liability of Sureties.*—A person became bound as surety for a tenant's performance of a contract of lease for one year, the rent payable monthly, and if the tenant held over after the time, the contract to continue for another year. *Held*, that if the tenant held beyond the expiration of the first year, the surety was bound for the subsequent rent. Coe v. Vodges, 71 Penn. State, (21 P. F. Smith) 383.

———; ———. That the premises were in an untenantable condition was no defence to the surety, the tenant having continued in possession. Ibid.

———; ———. The surety being informed by the landlord that the tenant was in arrears, gave him notice that he would not be further liable, the tenant paying the arrears to that time. This did not discharge the surety. He could not, by a mere notice that he would not be liable, dissolve the contract at his pleasure. Ibid.

Sale of Land by Metes and Bounds.—A parol agreement to sell 90 acres of land at $3.50 per acre, to begin on a certain line at a point named, "and go to the creek," makes the creek one of the boundaries; and the vendee must pay for the land within the enclosure, whether there be more than 90 acres or not. Ardery v. Rowles, 71 Penn. State, (21 P. F. Smith) 359.

Insurance; "Binding Receipt;" Contract with Broker.—An insurance company had a condition in their policies, that "no insurance proposed is to be considered in force until the premium is actually paid." Marland employed an insurance broker to effect an insurance; he prepared the application which was accepted by the company, who delivered him a "binding receipt," and afterwards the policy. Marland said to the broker it was not convenient to pay then, but if he was not safe he would get the money; the broker said he would be safe for thirty days; he showed Marland the policy, who asked him to keep it; the property was burned; the policy not having been delivered to Marland, nor the premium paid by him or the broker. *Held*, that the company was not liable. By giving the policy and receipt to the broker, the company gave him no authority to deliver them without payment of the premium, and his agreeing to give Marland credit, created no contract with the company. Payment was the consideration which gave life to the contract of insurance. Marland v. The Royal Insurance Co., 71 Penn. State, (21 P. F. Smith) 393.

Insurance of Mortgage Interest; Assignment of Policy.—An insurance was made to T., who gave a mortgage to W. T. assigned his policy to W. as security to W., who assigned to E. T. afterwards conveyed the property insured to C., and assigned him the policy; the insurance company refused to approve the assignment. E. afterwards became the owner of W.'s mortgage, and the company insured his interest as mortgagee. By the policy, on payment of a loss the mortgagee was to assign the mortgage to the company. The property was burned, and E. received the amount of his insurance, and assigned the mortgage to the company. *Held*, that the assignment was properly made; that T. had no claim upon the money paid for the loss, and that the company might recover from T. the amount due on the mortgage. Thornton v. Enterprise Ins. Co., 71 Penn. State, (21 P. F. Smith) 234.

1. *Equitable Mortgage; Vendor's Lien.*—Where a person purchases land, pays part of the purchase money in cash, and executes a note for the balance, together with a paper in the nature of a mortgage, but which is not sealed and not acknowledged according to law,—*held*, that such informal mortgage amounts simply to an acknowledgement that the vendor retains a lien on the land for the payment of the unpaid purchase money. Gill v. Blair, Sup. Court Mo., Oct. Term, 1873.

———; ———; *Notice; Subsequent Purchaser.*—A subsequent purchaser from the vendee, who has notice in fact of such lien, takes the land subject to the same. Ibid.

Practice of Supreme Court of Missouri; Non-suit.—In equitable actions the plaintiff cannot bring his cause before the supreme court for revision on the merits by taking a non-suit, and then appealing from the order of the circuit court refusing to set it aside; but there must be an adjudication in the circuit court on the facts and law, in order to allow the supreme court to pass upon them on appeal or writ of error. Ibid.

Practice of Supreme Court in Equity Cases.—In equity suits, the supreme court will examine the evidence, and decide the case according to the preponderance of testimony, and the law arising thereon. Ibid.

Conflict of Laws; Right of a Legatee residing in one State to sue in the Courts of Another.—A legatee residing in Kentucky, the will having been made and probated there, may maintain an action in the courts of Missouri against a person residing here, for a sum of money had and received of his testator, the title to which passed to him by the terms of the will, provided there are no creditors of the estate here. It is not necessary that the will should be proved in this state, in order to support such an action. Morton v. Hatch, Sup. Court Mo., Oct. Term, 1873.

Liability of Sureties who Sign Conditionally.—In Ayers v. Milroy, determined in the supreme court of Missouri, November 3, 1873, the oft-recurring question of the liability of a person who signs a bond or note as surety, upon condition that the signature of a certain other person as surety shall also be obtained, was presented for consideration. In this case, the instrument in question was a non-negotiable promissory note. WAGNER, J., said: "In a case of negotiable or commercial paper, it is very clear that the defence would not be held good. In a suit upon a note of that character, it was expressly held by this court, in the Bank v. Phillips, 17 Mo. 29, that it was no defence for an endorser who was sued upon a note, that he endorsed it on the express condition that it should also be endorsed by another person, where it did not appear that the plaintiff knew of the condition. In making this line of defence, there is a clear distinction recognized between bonds or other instruments that are not negotiable, and those which are negotiable. The question here presented has often been before the courts, and the almost universal holding has been, that where a bond or other instrument for the payment of money is executed by a surety, on condition that another person shall also sign it as surety, and if not so signed, then the principal obligor shall not deliver it, and if the obligor does deliver it in pursuance of this agreement, then the surety who signed it will not be bound."

In support of this rule the learned judge cited and reviewed the following cases: State v. Sandusky, 46 Mo. 377 Cutter v. Whittemore, 10 Mass. 442; Linn County v. Farris, 52 Mo. 75; Lovett v. Adams, 3 Wend. 380; Bronson v. Noyes, 7 Wend. 188; Leaf v. Gibbs, 4 Car. & Pay. 466; Perry v. Patterson, 5 Humph. 133; Bibb v. Reid, 3 Ala. 88; State Bank v. Evans, 3 Green (N. J.), 155; Carter v. McClintock, 29 Mo. 464; Pepper v. State, 22 Ind. 399; People v. Bostwick, 43 Barb. 9; S. C. in Court of Appeals, 32 N. Y. 445; Powling v. United States, 4 Cranch, 219; United States v. Leffler, 11 Peters, 86. And, after stating that Millet v. Parker, 2 Met. (Ky.), 608, was the only direct case he had found to the contrary, he concluded:

"The plaintiff here occupies the position of taking a security, to which the party giving it had no title. The defendant was merely a surety, and derived no benefit from the contract. If the rule of principal and agent applied, then the defendant would only be liable for such acts as he authorized. The power conferred in this case was conditional; and the condition not being performed upon which its execution depended, and, it being entirely unauthorized, the principal would not be bound. The rule is settled that an agent cannot bind a party contrary to his instructions, and a special authority must be strictly construed.

"In the case at bar, there was no delivery of the note upon which this action was brought, by the surety, who now defends. It was simply left with Jones on condition that he should not use it for the purposes intended, until after he had obtained the signature of another party. It was, therefore, incomplete, and the transaction was not consummated under such circumstances. Both upon principle and authority, the surety who signed the note is not liable until the condition is fulfilled."

The judgment below in favor of the surety was affirmed; all the judges concurring, except SHERWOOD, J., who was absent.

Suits by Corporations; Denial of Corporate Existence; Estoppel.—An important question has just been passed upon by the 5th District Court of New Orleans, CULLOM, J., in the case of the Working Men's Association Accommodation Bank v. Converse et al. We are indebted to John H. New, Esq., of counsel for defendants, for a copy of the opinion of Judge CULLOM, which, owing to its length, we regret that we are not able to publish in full. The bank brought suit on the bond of Converse, its general book-keeper, praying for judgment *in solido* against him and his sureties for certain moneys alleged to have been received by him in his character of book-keeper, and converted to his own use. The defendants filed several exceptions denying the corporate existence of the bank, or that it had any corporate existence at the date of the execution of the bond. The banking association was organized under the free banking law of Louisiana, Ray's Revised Statutes, §§ 275 *et seq.*, which provides, among other things, that the articles of association, after being executed by a notarial act, etc., shall be published for four weeks *in the official journal of the state.* The articles of association of the plaintiff were not published in the official journal, but in *another newspaper*, the New Orleans Times. There was also a slight discrepancy (probably a typographical error) between the original instrument, and the instrument as published. Section twenty-one in the authenticated instrument, appeared as section 22 in the Times newspaper. It also appeared that the articles of association, as executed and published, made no mention of the *residence of the corporators*, as required by the free banking law, above named; nor did they make any mention of a *corporate seal.*

The question thus presented was, whether, after having in the contract sued on, recognized the corporate existence of the plaintiff, the defendants were estopped from denying it in this suit. This, the learned judge decided in the negative, after reviewing and distinguishing the following cases: United States v. Amedy, 11 Wheat. 392; Steam Navigation Company v. Weed, 17 Barbour 378; Meikel v. German Savings Fund Society, 16 Ind., 181; Welland Canal Co. v. Hathaway, 8 Wend. 480; Silvernagle v. Flukle, 21 La. An., 188; Dejona v. Steamboat Osceola, 17 La. An., 277; Lewis v. Homer, 23 La. An., 254; Mutual Fire Ins. Co. v. Horner, 17 Ohio, 407; Tarbell v. Page, 24 Ill., 46; Rice v. Rock Island Railroad Company, 21 Ill., 93; Eagle Works v. Churchill, 2 Bosworth, 166; Persse & Brooks' Paper-works v. Willett, 1 Robertson, 131.

Set off; Liquidated Demand; Demand for Conversion of Indian Trust Bonds.—A demand by the United States for the proceeds of Indian trust bonds, unlawfully converted to their own use, by persons who had illegally procured and sold them, and had afterwards become wholly insolvent, is a demand arising on an implied contract, or one which may be so treated by a waiver of the alleged fraud in the conversion of the bonds. It is, therefore, the proper subject of set-off by the United States, in a suit by the general assignees in insolvency of the parties who had thus converted the bonds to their own use, for the recovery of the price of certain property which had formerly belonged to the insolvents, and which had, by their said general assignees, been sold to the United States. The amount of the proceeds of the bonds, though not determined by judicial proceedings, was sufficiently liquidated, to be at any time the subject of set-off; since it could be stated with certainty, and interest could be computed and added. And even if, prior to the passage of the act of March 3d, 1863, amending the act establishing the court of claims, objection to the set-off existed in the fact that the demand of the United States was unliquidated, (assuming it to have been the fact), none could exist subsequently; since the fifth section of the act covers this class of demands. Allen v. United States, U. S. Sup. Court, Oct. Term, 1873.

Notices of Books and Exchanges.

The American Law Record, Cincinnati: Conducted and published by Herman M. Moos, Esq.

This is a monthly, in form and character much like the American Law Register. It is made up chiefly of decisions of various American courts, reported in full. It gives its readers, in each issue, 64 pages of reading matter, printed on small type. They thus get, in the course of the year, at a cost of $5,00, about the quantity of matter that would make three ordinary volumes of law reports. It is well printed, and its selections appear to be made with discrimination.

The Saint Louis Journal of Law: Weekly: $3 per annum. Edwards & Sage, 106 Market street, St. Louis, Mo.

The Journal of Law deserves the thanks of the bar of Missouri for reporting the decisions of the supreme court of this state, very soon after their rendition. This feature alone ought to insure the Journal a good support. It otherwise contains the usual matter found in a weekly publication of this character, and under its present management is well conducted.

In acknowleding in our last issue, the exchanges sent to us, by a *lapsus pennæ*, we changed the name of the Pittsburgh Legal Journal to the Pittsburgh Legal Gazette. The Legal Gazette is published in Philadelphia. Both are weeklies, and among our most valuable exchanges.

Reports of Cases determined in the Supreme Court of California, at the January and April terms, 1872, Vol. 43; Charles A. Tuttle, reporter.

The fact that from 1850, when California was little more than a desert, to 1872, at which date its population did not, perhaps, exceed 800,000 souls, the volums of litigation in its courts has been so great as to produce an average of nearly two volumes of reports a year, argues the great activity and prosperity of that state.

The present volume contains about 730 pages of printed matter; is printed on the largest type used in law reports, and is well leaded and spaced. The same matter, printed in the style of the New Hampshire Reports, could have been included in 400 pages. The reporter's head-notes are very full; perhaps they might be reduced in length without diminishing their accuracy. Mr. Tuttle is entitled to credit for stating fully each case where it is not fully stated in the opinion, and for presenting with sufficient fullness the arguments of counsel—duties which are so generally slurred over or neglected by reporters, that it is getting to be a standing observation, that the business of law reporting is one of the lost arts. It seems to us quite unnecessary, however, to set out, as he has done, at the head of each case, the full names of all the parties. It would seem that the names of the leading plaintiff and defendant, by which the case must be known, would be sufficient.

The opinions are models of brevity. Although an unusual number of the cases are devoted to questions of practice, yet many of them determine questions of general importance; and some of them we hope to find room to notice under the head of "Notes of Recent Decisions" in our next number.

The American Law Review, January, 1874. Boston: Little, Brown & Company.

Two widely different notions exist in regard to the office of a quarterly publication. By some, it is supposed to occupy about the same posi-

tion among the weeklies, that the *Devastation* would occupy among a fleet of "tin-clads," such as we used in our late war. This conception makes it a receptacle of heavy and exhaustive disquisitions, such as can only be read by scholarly men, who are not overburdened with the cares of business. The other notion makes of it a sort of limbo, into which are tumbled the long and tedious essays, written by men who are unable to condense their thoughts into a brief compass, and which the smaller journals cannot print, nor the busier world read. Perhaps neither of these definitions does justice to the Law Review. Whilst the present number contains the usual amount of "heavy" editorial matter, "grated down and filed away with thought," it is not destitute of lighter reading, of a more varied and more enjoyable character. The first article is a fifty-page discussion, historical and legal, of the ever-to-be-remembered Dartmouth College case. The drift of popular sentiment within the past two or three years has given to this case peculiar prominence; and now, when the accumulated interests of fifty years rest upon the principle it declared, the people are beginning to think that it settled the law of vested wrongs rather than that of vested rights—that, instead of being the shield of the weak, it has become the sword of the strong. The writer in the Review argues that the decision was wrong, and suggests a declaratory amendment of the constitution as the least objectionable mode of obviating it. It is evident that the questions which gather around that case, are questions of to-day. They present issues which are knocking at the door, and which, like the slavery question, must be met and passed in some way. And the case of Dartmouth College v. Woodward, promises to acquire a popular fame equal to that of Dred Scott.

The next article relates to the San Juan boundary question, recently settled, and is political rather than legal.

The article on the Supreme Court of Judicature Act and Law Reform, will be read, we suppose, by every person who desires to acquaint himself with the sweeping changes, which have recently been made in the English judiciary system.

The Digest of Recent Decisions we pass over. We have never had much conceit in this feature of the law periodicals; and yet some will say, that if a law periodical were composed of this and nothing else, it would attain its highest degree of usefulness. The difficulty consists in the fact that the volume of adjudicated cases is so great, that such a digest can be at best but partial, and hence its value depends to a great extent upon the rule of selection. But even a partial selection is valuable as far as it goes, and helps the practitioner to form some idea of what the courts are doing.

The book notices in this number seem conceived not so much in a spirit fault-finding, as those of former issues. The praise of Mr. Holmes' new edition of Kent's Commentaries is harped by a most friendly hand; but, we doubt not, the work deserves the full measure of approbation accorded to it.

Legal News and Notes.

—THE Tichborne case has been postponed on account of the illness of Dr. Kenealy, counsel for the defendant.

—IT is stated that the late Lord Westbury, ex-chancellor of England, made his own will and actually omitted naming executors. It is also stated that he overlooked for a long time the simple fact in English law, that his second marriage invalidated a will previously made.

—A LARGE number of merchants of St. Paul have sent a telegram to their delegation in congress, begging them to oppose a total repeal of the bankrupt law. They say, "We have no objection to the modification suggested by the president. The clauses relating to dishonest actions on the part of debtors are our only protection, and ought to be retained."

—THE board of trade of Cincinnati has passed a resolution protesting against the proposed repeal of the bankrupt law, especially the involuntary clause; but recommending amendments reducing the expenses of enforcing the law, by reducing the fees of officers, and that § 39 be so amended as to make thirty instead of fourteen days, the time which must elapse, before proceedings can be commenced after a suspension of payment of commercial paper.

—THE late Justice NELSON was twice married; first, in 1819, to Pamela Woods, daughter of his former instructor in the law, and three years after her death, which occurred in 1822, to Catherine A. Russell, of Cooperstown. At the date of this second marriage, he settled permanently at Cooperstown, where he lived for more than 50 years. Those of his family who survive him, are his wife, who was with him at the last, two daughters and two sons, one of whom is the Hon. Renssellaer R. Nelson, United States district judge for Minnesota.

—A BILL has been introduced into the National House of Representatives, by Hon. C. L. Cobb, extending the time for filing claims with the commissioner of claims, appointed under the act of March 3, 1871, to March 3, 1875. The second section construes the terms "stores and supplies" to include buildings, and other structures and grounds used or occupied by the army or navy of the United States, in the states proclaimed as in insurrection, for barracks, quarters, hospitals, etc., for periods not less than thirty-five consecutive days; but does not allow any claim for damage or destruction incident to a state of war. The fourth section requires an itemized statement by the claimant. The sixth section authorizes the employment of five agents, in lieu of the three agents, now provided for by law.

—IN the United States district court at Jefferson City on the 17th ult., before Judge KREKEL, a question of some interest was determined in the case of Kappner, assignee of the St. Louis and St. Joseph Railroad company v. Ingles. The defendant and twelve others constituted the original corporators and directors of the road. These directors paid a small portion of their stock in cash, and then by a resolution of the board, declared the balance of the subscription paid in services. For the amount due for stock, which they thus voted themselves exempt from paying, the receiver brought suit against each. The instructions were such, as, under the evidence, required a verdict for the plaintiff. Verdict and judgment that the plaintiff recover $4,370.

—THE supreme court of Iowa decided on the 17th ult., at Des Moines, an important case respecting the law for restraining stock from running at large in the night time. The act provides that stock taken in the act of doing damage between sunset and sunrise, may be detained by the person whose property is injured, whether the fences surrounding such property were lawful or otherwise. The last section of the act provides that the law shall be submitted to a vote of the people of the counties, and shall not be in force in any county unless a majority, of the votes be cast in favor of its adoption. The court decides the last section unconstitutional—that no law can be passed to go into effect at a time to be fixed by somebody else; and also, that (except the last section) the law is in full force as a general law without regard to a vote of the people.

—ON November 19, at the sittings in Banco of the court of common pleas, before Justices Keating, Brett and Grove, the new lord chief justice, Sir John Coleridge, took his seat on the bench.

For some time before the usual hour for commencing business the court was crowded by gentlemen of the bar and other persons, who had got to know that the new lord chief justice was likely this morning to take his seat upon the bench, and that the preliminary process of investing him with the coif would be gone through in open court. The audience were kept waiting, for it was not until near close upon 11 o'clock that the judges took their seats upon the bench.

Sir John Coleridge almost at the same time made his appearance at the back of the bar, and advanced along a passage opened in the centre of it, until he got close upon the front row, where he halted, while the ancient form of "counting" in dower was gone through. Mr. Sergeant Parry and Mr. Sergeant Ballantine, the two senior sergeants, and Master Bennett, officiated in this proceeding.

Mr. Justice Keating, as soon as the "counting" was completed, said, Brother Coleridge, will you take your seat inside the bar?

Brother Coleridge accordingly stepped into the front row of the bar, and bowed right and left to the Queen's counsel, sergeants and other barristers present.

Mr. Justice Keating then said: Brother Coleridge, will you move anything?

Brother Coleridge, having nothing to "move," simply bowed to their lordships, shook hands with his professional brethren near him, and took his farewell of the bar.

Mr. Justice Keating observed that the court would adjourn for a few minutes in order to give time for the lord chief justice to take his seat.

On the reassembling of the court the lord chief justice appeared upon

the bench robed in a judge's robe, and wearing his S. S. gold chain. Master Bennett administered to him the oath of allegiance to "Her Majesty Queen Victoria, her heirs and successors, according to law," and also the oath that he would "well and truly serve our sovereign lady, Queen Victoria, in the office of chief justice in the court of common pleas," and that he would "do right to all manner of people after the laws and usages of this realm, without fear or favor, affection or good will." His lordship afterward subscribed these oaths upon the roll on which they had been engrossed, and this brought the proceedings to a close, and the ordinary business of the court was gone on with.—[*London Daily News.*

Salaries of United States Collectors—Decision by Judge Treat.

Judge TREAT, of the United States district court for the eastern district of Missouri, has rendered an important decision in the case of the United States v. Donovan, in reference to the salaries of United States collectors. The case is stated by the Saint Louis Democrat, as follows: Donovan is administrator of his father, Daniel H. Donovan, who was collector and surveyor of the port of St. Louis at the beginning of the war. Following the precedent of many years, the late Mr. Donovan had charged $6,000 a year for his services, and the government contended that he was entitled to only $5,000. The suit was to settle the disputed question, which had remained undecided for a period of fifteen years.

The collector and surveyor of the port had always withheld $6,000 as his annual compensation, and the treasury department had credited him with $5,000, leaving a balance on the books against the officer. Bingham, Sanderson, and others, to whom the matter had been referred, had given the opinion that the collectors of St. Louis and other large cities were entitled to the same compensation as those of New York, Boston, etc. Judge TREAT, in his opinion, held that the ninth section of the act of 1822 gave the collectors of seven named ports $4,000 a year as compensation, such officers being classified as collectors of enumerated ports; that the same section gave to all other collectors $3,000; that the fifth section of the act of 1841, as expounded by the court in United States v. Walker, 22 How. 299, and in United States v. McDonald, 5 Wall. 347, gave to collectors of all ports $2,000 a year, when derived from storage on goods in bond, which was additional to the allowance on the ninth and tenth sections of the act of 1822. That the act of 1841 had no other effect than to give to collectors of enumerated and unenumerated ports the same compensation for storage. That the act of 1857, providing that surveyors of certain ports doing duty as collectors, should receive the same compensation for like services, made no discrimination between the different classes of collectors; so that the same construction applied to that act, as in the case of Walker under the act of 1841, namely: that the act of 1857 and that of 1841 related to two classes of collectors—one receiving $5,000 and the other $6,000, and accordingly as to whether he did duty as collector, represented one or the other of the two classes, so was he to be compensated.

That the act of 1822, perhaps, was intended by those who introduced it, to increase the compensation of surveyors and collectors, but its provisions were about the same as the act of 1857, and that the same construction has been given to both, and, in the opinion of the court, Mr. Donovan, as collector of St. Louis, was entitled to only $5,000 compensation, instead of $6,000. Judgment was accordingly rendered in favor of the United States for $1,287.03.

The principle involved in this case applies to the cases of Howard, Breckinridge, Fox, and several other collectors who preceded them, and against whom, balances stand on the books of the treasury department for sums varying from $1,000 or $2,000 to $3,000 to $6,000. The same rule will apply to collectors of Cincinnati, Chicago, and all other ports, except the seven enumerated in the act of 1822.

The Bankrupt Law—A Suggestion as to its Modification.

[Charles C. Whittelsey, Esq., in the National Bankruptcy Register.]

The consolidated English bankrupt act, adopted in 1869, two years after the passage of our statute, with its improvements upon the old methods, was printed in Vol. IV. of the Register, but does not seem to have excited the attention of any one, not even that of the members of the bar, until in this present crisis in the commercial community, the necessity of doing something for commercial men, so as to enable them to come to some other terms than an actual breaking up of their whole business, is fully seen and realized.

We, members of the bar, often see what amendments are needed to our laws; but as we are not legislators ourselves, we fail to bring to public attention the reforms which our experience has suggested.

The English statute of 1869 has a provision by which a debtor, who finds himself unable to proceed with his business in its ordinary course, can call a meeting of his creditors, and, with the assent of a majority in number, excluding those under ten pounds, and the assent of a majority of three-fourths in value, effect a compromise upon such terms as he and the majority may agree to, and thus force the minority to accept the same terms, whether for payment in full on time, or for compounding at so much per cent. on the dollar, in cash or on time. The majority determine the terms for the compromise, and its resolution can be enforced by the court. The methods of procedure are pointed out by the act; the creditors are summoned by the debtor to attend a meeting in person or by proxy, to consider and vote upon the terms proposed by the debtor; the meeting appoints its own officers, keeps its own record, accepts or rejects the overtures for compromise, and reports its proceedings to the court, and if all is found in form, the entry of record is made, and the matters are all settled in the manner proposed by the creditors, and the anxiety, annoyance, and waste of a proceeding in bankruptcy is saved.

Had such a proceeding been recognized by our statute, how many of the embarrassed business men could have effected a compromise with their creditors, so as to carry on their business, a saving both to creditors and debtors. If many prominent banking houses could have effected an arrangement, much might have been saved which must now be lost, because one creditor persists in pushing his petition in bankruptcy, and thereby prevents any arrangement for composition, or an indulgence for time of payment.

A provision for compromise, similar to that of the English bankrupt act, should be immediately passed by congress, so as to give present relief from the danger threatening every suspended house.

The Dred Scott Decision—Nelson, Story, Taney, Stowell.

[From the New York Express.]

Here and there, lingers a strong prejudice against Judge Taney for his decision in the Dred Scott case, and especially in New England, some of whose citizens object to the proposed portrait of the chief justice alongside that of Chase in the supreme court room; but Judge Nelson, upon whose memory so many honors are being bestowed, would have decided the same way. This same Judge Nelson, in the United States Supreme Court, on the Dred Scott case, quoted a very remarkable letter written by Judge Story in 1828, relating to a case analogous to that of Dred Scott. Judge Story was accustomed to write at least once a year to Lord Stowell, sending him a copy of his judicial decisions, which the latter reciprocated. At length a case arose in the English court, (of which Lord Stowell was chief justice), where an Antigua slave was carried by his master to England, for temporary residence, and was subsequently taken back to Antigua. He brought suit for his freedom, and the inferior court decided against his right to freedom. In the appellate court, Lord Stowell, in behalf of a majority of the court, affirmed the judgment below. Lord Stowell sent the decision to Judge Story, who delayed replying so long, that Lord S. again wrote to him, expressing regret at not receiving a reply, and the hope that their pleasant correspondence, of so many years' standing, would not cease. To these letters, Judge Story replied as follows:

"SALEM, NEAR BOSTON, September 2, 1828.

"*To Rt. Hon. Wm. Lord Stowell:*

"MY LORD—I have the honor to acknowledge the receipt of your letters of January and May last, the former of which reached me in the latter part of spring, and the latter quite recently. * * * I have read, with great attention, your judgment in the slave case from the vice-admiralty court of Antigua. Upon the fullest consideration which I have been able to give the subject, I entirely concur in your views. If I had been called to pronounce judgment in a like case, I should certainly have arrived at the same result, though I might not have been able to present the reasons which led to it in such a striking and convincing manner. It appears to me that the decision is impregnable.

"In my native state (Massachusetts), the state of slavery is not recognized as legal, and yet, if a slave should come hither and afterward return to his own home, we should certainly think that the local law would reattach upon him, and that his servile character would be reintegrated. I have had occasion to know that your judgment has been extensively read in America (where questions of this nature are not of unfrequent discussion), and I never have heard any other opinion but that of approbation of it, expressed among the profession of the law. I cannot but think that upon questions of this sort, as well as general maritime law, it were well if the common lawyers had studied a little more extensively the principles of public and civil law, and had looked beyond their own municipal jurisprudence.

"I remain, with the highest respect, your most obedient servant,

JOSEPH STORY."